



The State of Texas
House of Representatives
Committee on Public Education

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Ernestine V. Glossbrenner . Chair

file # MC-17246-92
ID # 17246
MBJ

August 31, 1992

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

RO-438

RECEIVED

Opinion Committee

Re: Request for Attorney General Opinion

Dear General Morales:

This letter is a request for an Opinion of the Attorney General on the questions presented hereunder. H.B. 2885, passed during the Regular Session of the 72nd Legislature, contained several provisions relating to group health insurance for public school employees. Those provisions are scheduled to go into effect on September 1, 1992. One of the provisions was an amendment to Article 3.50-2, Vernon's Texas Insurance Code, by the addition of Section 3A, which reads as follows:

- (a) A school district may elect to participate in the plans, programs, and coverages offered to state employees under this Act. A district that elects to participate must accept the schedule of costs adopted by the trustee.
- (b) If the trustee determines that participation of school district employees in the plans of group coverages offered under this Act to state employees would have a significant adverse impact on the plans, programs, or coverages offered to state employees, the trustee may establish separate plans of group coverages for school district employees. If separate plans of group coverages for school district employees are established, school district employees may not participate in the plans of group coverages offered under this Act to state employees. In establishing and administering the separate plans for school district employees, the trustee, the executive director of the Employees Retirement System of Texas, and the State Board of Insurance have all the powers and duties assigned to them under this Act in relation to plans, programs, and coverages offered to state employees.
- (c) The trustee may assess a participating school district a fee to cover administrative costs if state funds are not appropriated for this purpose.

On August 26, 1992, the Board of the Employees Retirement System passed the following motions:

. . . that the Board of Trustees of the ERS of Texas adopt the Health Insurance Comparability Certification Form included as Exhibit B of this item to be used by the Texas public independent school districts in certifying to the Executive Director of the Employees Retirement System of Texas compliance with the comparability provision of H.B. 2885, 72nd Texas Legislature, Regular Session.

. . . that the Board of Trustees of the ERS of Texas determine that participation of Texas public school district employees in the Texas Employees Uniform Group Insurance Program would have a significant adverse impact on the program.

. . . further, that a separate group health insurance plan for public school employees, developed within the framework described in Exhibit C of this item and to be administered by the Employees Retirement System of Texas, be approved with implementation delayed until such time as an adequate contingency reserve fund is available and the Board of Trustees has approved such implementation.

The questions we seek your opinion on are the following:

Do the trustees under the plan (the Board of Trustees of the Employees Retirement System of Texas) have the authority to delay access to the group health insurance plan, either the existing coverage offered to state employees under the Uniform Group Insurance Plan or a separate plan, beyond September 1, 1992? If the separate plan is not available by September 1, 1992, can the ERS prevent school districts from participating in the state employee plan?

If a school district does not make available to its employees group health coverage consistent with the provisions of TEC Section 13.913, are public school employees entitled to participate in the coverage for public school employees administered by ERS?

Under H.B. 2885, how does the fiduciary duty of the trustee under the plan (the Board of Trustees of the ERS of Texas) owed to state employees differ, if at all, with the fiduciary duty of the trustee owed to public school employees? When does the trustees' fiduciary duty to public school employees begin?

If school districts do not make available to its employees group health coverage consistent with the provisions of TEC Section 13.913, must public school employees exhaust their administrative remedies in pursuing a lawsuit or complaint based on TEC Section 13.913, and if so, through which state agency must the public school employee exhaust her/his administrative remedies?

Were the motions adopted by the Board of Trustees of ERS on August 26, 1992, related to H.B. 2885, subject to the rulemaking and notice provisions of the Administrative Procedure and Texas Register Act, Art. 6252-13a, Vernon's Civil Statutes?

Please let me know if you need further information. Thank you for your prompt attention to this request.

Sincerely,



Ernestine V. Glossbrenner
Chair, Committee on Public Education

cc: Board of Trustees of ERS
Commissioner Lionel Meno
Representative Gregory Luna
Senator Carl Parker
Texas Classroom Teachers' Association
Texas State Teachers' Association
Texas Federation of Teachers
Association of Texas Professional Educators
Texas Association of School Administrators
Texas Association of School Boards